

AMENDED IN SENATE APRIL 3, 1997

**SENATE BILL**

**No. 795**

**Introduced by Senator Kopp**  
**(Coauthor: Senator Hughes)**

February 26, 1997

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An act to amend Sections 10153.6 and 10232 of, and to add Sections 10234.5, 10236.4, 10236.5, ~~and 10236.7~~ 10236.7, 10236.8, 10236.9, 10236.10, and 10236.11 to, the Business and Professions Code, relating to real estate.

LEGISLATIVE COUNSEL'S DIGEST

SB 795, as amended, Kopp. Real estate loans: mortgage loan broker requirements.

Existing law sets forth various requirements with respect to regulation of real property loans and, among other things, requires a real estate broker who meets specified criteria, including making 20 in an aggregate amount in excess of \$2,000,000, to file annual reports and periodic trust fund status reports with the Real Estate Commissioner.

This bill would delete those numerical and monetary limits thus requiring every broker placing one or more loans to comply with those reporting requirements. It would require a broker to list his or her license number on specified advertisements, and to send conformed copies of a deed or trust to the investor or lender and to the borrower within a reasonable amount of time. As a condition of license renewal, the broker would be required to notify the Department of Real Estate annually as to his or her compliance with specified requirements.

*Existing law requires a real estate broker who accepts funds belonging to others to deposit those funds into a neutral escrow depository or trust account, as specified.*

*The bill would also require the maintenance of an interest bearing demand trust account by a licensed real estate broker conducting business as a mortgage loan broker for deposit of client funds that are nominal in amounts or being held on deposit for a limited period of time, as specified. The interest earned on the accounts would be paid by depository institutions to the Department of Real Estate for maintenance of a toll-free telephone number and specified enforcement purposes. The department would be required to adopt implementing regulations. Certain of these requirements would be operative contingent upon the adoption of those regulations.*

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 10153.6 of the Business and  
2 Professions Code is amended to read:

3 10153.6. All real estate broker licenses issued by the  
4 commissioner shall be for a period of four years.

5 Applicants must qualify in the appropriate examination  
6 and satisfy all other requirements prior to issuance of the  
7 license.

8 The four-year license may be renewed upon filing the  
9 required application and fee, and complying with the  
10 provisions of Article 2.5 (commencing with Section  
11 10170) of this chapter, and Section 10236.7.

12 SEC. 2. Section 10232 of the Business and Professions  
13 Code is amended to read:

14 10232. (a) Except as otherwise expressly provided,  
15 Sections 10232.2 and 10232.25 are applicable to every real  
16 estate broker who intends or reasonably expects in a  
17 successive 12 months to do any of the following:

18 (1) Negotiate a combination of one or more of the  
19 following transactions pursuant to subdivision (d) or (e)  
20 of Section 10131 or Section 10131.1 :



1 (A) Loans secured directly or collaterally by liens on  
2 real property or on business opportunities as agent for  
3 another or others.

4 (B) Sales or exchanges of real property sales contracts  
5 or promissory notes secured directly or collaterally by  
6 liens on real property or on business opportunities as  
7 agent for another or others.

8 (C) Sales or exchanges of real property sales contracts  
9 or promissory notes secured directly or collaterally by  
10 liens on real property as the owner of those notes or  
11 contracts.

12 (2) Make collections of payments on behalf of owners  
13 of promissory notes secured directly or collaterally by  
14 liens on real property, owners of real property sales  
15 contracts, or both.

16 (3) Make collections of payments on behalf of obligors  
17 of promissory notes secured directly or collaterally by  
18 liens on real property, lenders of real property sales  
19 contracts, or both.

20 Persons under common management, direction or  
21 control in conducting the activities enumerated above  
22 shall be considered as one person for the purpose of  
23 applying the above criteria.

24 (b) The negotiation of any new loan and sale or  
25 exchange of an existing promissory note and real  
26 property sales contract shall create a rebuttable  
27 presumption that the broker intends to negotiate new  
28 loans and sales and exchanges that will meet the criteria  
29 of subdivision (a).

30 (c) In determining the applicability of Sections  
31 10232.2 and 10232.25, any loan or sale negotiated by a  
32 broker, or for which a broker collects payments or  
33 provides other servicing for the owner of the note or  
34 contract, shall not be used in determining whether the  
35 broker meets the criteria of subdivisions (a) and (b) if  
36 any of the following apply:

37 (1) The lender or purchaser is any of the following:

38 (A) The Federal National Mortgage Association, the  
39 Government National Mortgage Association, the Federal

1 Home Loan Mortgage Corporation, the Federal Housing  
2 Administration, and the Veteran's Administration.

3 (B) A bank or subsidiary thereof, bank holding  
4 company or subsidiary thereof, trust company, savings  
5 bank or savings and loan association or subsidiary thereof,  
6 savings bank or savings association holding company or  
7 subsidiary thereof, credit union, industrial bank or  
8 industrial loan company, commercial finance lender,  
9 personal property broker, consumer finance lender, or  
10 insurance company doing business under the authority  
11 of, and in accordance with, the laws of this state, any other  
12 state, or of the United States relating to banks, trust  
13 companies, savings banks or savings associations, credit  
14 unions, industrial banks or industrial loan companies,  
15 commercial finance lenders, or insurance companies, as  
16 evidenced by a license, certificate, or charter issued by  
17 the United States or a state, district, territory, or  
18 commonwealth of the United States.

19 (C) Trustees of a pension, profit sharing, or welfare  
20 fund, if the pension, profit sharing, or welfare fund has a  
21 net worth of not less than fifteen million dollars  
22 (\$15,000,000).

23 (D) A corporation with outstanding securities  
24 registered under Section 12 of the Securities Exchange  
25 Act of 1934 or a wholly owned subsidiary of that  
26 corporation.

27 (E) A syndication or other combination of any of the  
28 entities specified in subparagraph (A), (B), (C), or (D)  
29 that is organized to purchase the promissory note.

30 (F) The California Housing Finance Agency or a local  
31 housing finance agency organized under the Health and  
32 Safety Code.

33 (G) A licensed residential mortgage lender or servicer  
34 acting under the authority of that license.

35 (H) A licensed real estate broker selling all or part of  
36 the loan, the note, or the contract to a lender or purchaser  
37 specified in subparagraphs (A) through (G) of this  
38 subdivision.

39 (2) The loan or sale is negotiated, or the loan or  
40 contract is being serviced for the owner, under authority

1 of a permit issued pursuant to Article 6 (commencing  
2 with Section 10237) or applicable provisions of the  
3 Corporate Securities Law of 1968 (Section 25000 and  
4 following of the Corporations Code).

5 (d) If two or more real estate brokers who are not  
6 under common management, direction, or control,  
7 cooperate in the negotiation of a loan or the sale or  
8 exchange of a promissory note or real property sales  
9 contract and share in the compensation for their services,  
10 the transaction shall be allocated to each broker as though  
11 they alone had negotiated the loan or sale or exchange.

12 (e) A real estate broker who satisfies the criteria of  
13 subdivision (a) or (b) shall, within 30 days thereafter,  
14 notify the Department of Real Estate in writing of that  
15 fact.

16 SEC. 3. Section 10234.5 is added to the Business and  
17 Professions Code, to read:

18 10234.5. In addition to the requirements of Section  
19 10234, in the placing of any loan, a broker shall deliver  
20 conformed copies of any deed of trust to both the investor  
21 or lender and the borrower within a reasonable amount  
22 of time from the date of recording.

23 SEC. 4. Section 10236.4 is added to the Business and  
24 Professions Code, to read:

25 10236.4. (a) In compliance with Section 10235.5,  
26 every licensed real estate broker shall also display his or  
27 her license number on all advertisements where there is  
28 a solicitation for borrowers or potential investors. In  
29 addition, the broker shall disclose in any such  
30 advertisement the toll-free telephone number  
31 established by the department pursuant to Section  
32 10236.5.

33 (b) The real estate broker shall additionally disclose  
34 both the license number and toll-free telephone number  
35 whenever a borrower or investor signs any documents  
36 related to a loan negotiated by the broker.

37 SEC. 5. Section 10236.5 is added to the Business and  
38 Professions Code, to read:

39 10236.5. (a) The department shall establish a toll-free  
40 telephone number, the purpose of which is to enable the

1 public to ascertain whether or not a real estate broker is  
2 in good standing with the department.

3 (b) The toll-free telephone number may be tied to a  
4 voice mail system within the department and may be  
5 used as a matrix of a threshold data base, through which  
6 a person telephones the toll-free telephone number and  
7 enters the license number through a touch-tone function  
8 of his or her telephone.

9 (c) The department shall notify the caller through the  
10 voice mail system as to whether or not the broker's filings  
11 are current and whether there are any violations against  
12 the broker.

13 SEC. 6. Section 10236.7 is added to the Business and  
14 Professions Code, to read:

15 10236.7. As a condition of license renewal, a real estate  
16 broker shall notify the department annually as to his or  
17 her compliance with the requirements of Sections 10234.5  
18 and 10236.4.

19 SEC. 7. Section 10236.8 is added to the Business and  
20 Professions Code, to read:

21 10236.8. (a) In addition to the requirements of  
22 Sections 10145 and 10232.25, a licensed real estate broker  
23 conducting business as a mortgage loan broker shall  
24 establish and maintain an interest bearing demand trust  
25 account and shall deposit therein all mortgage loan  
26 broker client deposits that are nominal in amount or  
27 being held on deposit for a limited period of time. Those  
28 funds may be deposited in a single unsegregated account.  
29 The interest earned on the accounts shall be paid in  
30 accordance with subdivision (c) of Section 10236.9 to the  
31 Department of Real Estate to be used for funding a  
32 toll-free telephone number and additional enforcement  
33 efforts pursuant to Section 10236.5.

34 (b) Nothing herein shall prohibit a licensed real estate  
35 broker from establishing one or more interest bearing  
36 bank accounts or other trust investments as may be  
37 permitted by the Department of Real Estate, with the  
38 interest or dividends earned on the accounts payable to  
39 clients for trust funds not deposited in accordance with  
40 subdivision (a).

1 (c) The Department of Real Estate may formulate and  
2 enforce rules of professional conduct pertaining to the  
3 use by mortgage loan brokers of interest bearing trust  
4 accounts for unsegregated client funds.

5 (d) Nothing herein shall affect or impair the  
6 disciplinary powers and authority of the Department of  
7 Real Estate or modify any statutes and rules governing  
8 the conduct of licensed real estate brokers.

9 SEC. 8. Section 10236.9 is added to the Business and  
10 Professions Code, to read:

11 10236.9. A licensed real estate broker conducting  
12 business as a mortgage loan broker who establishes an  
13 interest bearing demand trust account pursuant to  
14 subdivision (a) of Section 10236.8 shall comply with all of  
15 the following:

16 (a) The interest bearing trust account shall be  
17 established with a bank or other financial institution as  
18 authorized by the Department of Real Estate.

19 (b) The rate of interest payable on any interest  
20 bearing demand trust account shall not be less than the  
21 rate paid by the depository institution to regular,  
22 nonmortgage loan broker depositors. Higher interest  
23 rates offered by the institution to customers whose  
24 deposits exceed certain time or quantity qualifications,  
25 such as those offered in the form of certificates of deposit,  
26 may be obtained by a mortgage loan broker if there is no  
27 impairment of the right to withdraw or transfer principal  
28 immediately, except as accounts generally may be subject  
29 to any statutory notification requirements,  
30 notwithstanding that interest may be forfeited thereby.

31 (c) The depository institution shall do all of the  
32 following:

33 (1) Remit interest on the average daily balance in the  
34 account, less reasonable service charges, to the  
35 Department of Real Estate, at least quarterly.

36 (2) Transmit to the Department of Real Estate with  
37 each remittance a statement showing the name of the  
38 mortgage broker for whom the remittance is sent, the  
39 rate of interest applied, and the amount of service charges  
40 deducted, if any.

1 (3) Transmit to the depositing mortgage loan broker  
2 at the same time a report showing the amount paid to the  
3 Department of Real Estate for that period, the rate of  
4 interest applied, the amount of service charges deducted,  
5 if any, and the average daily account balance for each  
6 month of the period for which the report is made.

7 SEC. 9. Section 10236.10 is added to the Business and  
8 Professions Code, to read:

9 10236.10. The Department of Real Estate shall adopt  
10 any regulations and procedures necessary to implement  
11 Sections 10236.8 and 10236.9 in order to ensure that the  
12 funds allocated herein are utilized to provide funding for  
13 the toll-free telephone number and additional  
14 enforcement efforts pursuant to Section 10236.5. In  
15 adopting those regulations and procedures, the  
16 department shall do the following procedures:

17 (a) Publish a preliminary draft of any such regulations  
18 and procedures for distribution, together with notices of  
19 the hearings required by subdivision (b), to depository  
20 institutions and to licensees of the department.

21 (b) Hold at least two public hearings, one in southern  
22 California and one in northern California, where affected  
23 and interested parties shall be afforded an opportunity to  
24 present oral and written testimony regarding any  
25 proposed regulations and procedures.

26 SEC. 10. Section 10236.11 is added to the Business and  
27 Professions Code, to read:

28 10236.11. The requirements of Section 10236.9 shall  
29 become operative only upon the adoption of a resolution  
30 by the Department of Real Estate stating that regulations  
31 have been adopted pursuant to Section 10236.10 that  
32 conform those requirements to applicable tax and  
33 banking statutes, regulations, and rulings.